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16 UNITED STATES DISTRICT COURT FOR THE
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 UNITED STATES OF AMERICA,

Petitioner,

v.

21 COINBASE, INC.,

22 Respondent.

Case No. 3:17-cv-01431-JSC

**UNITED STATES' RESPONSE TO
COINBASE INC.'S OPPOSITION TO
PETITION TO ENFORCE
INTERNAL REVENUE SERVICE
SUMMONS**

Courtroom: F (15th Floor)

Judge: Hon. Jacqueline Scott Corley

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1 The IRS is conducting an investigation to identify U.S. taxpayers who have used virtual currency
2 to determine if they have complied with the internal revenue laws. In furtherance of that investigation,
3 this Court approved the service of a summons to Coinbase. Coinbase has refused to comply with that
4 summons and now opposes enforcement. The United States, however, has established all of the elements
5 required for enforcement of a summons: (1) the summons was issued for the legitimate purpose of
6 conducting an investigation to determine the identity and correct federal income tax liabilities of United
7 States persons who conducted transactions in a convertible virtual currency as that term is defined in
8 IRS Notice 2014-21, for tax years 2013-2015; (2) the information requested may be relevant to the
9 IRS's investigation; (3) the information sought is not within the possession of the IRS; and (4) the IRS
10 followed all administrative steps required by the Internal Revenue Code. Accordingly, the summons
11 directed to Coinbase, as narrowed, should be enforced.

12 **I. Background**

13 **A. The IRS's Investigation of Virtual Currency**

14 In January 2009, the first bitcoins were mined. Less than four years later, in May 2013, the
15 Government Accountability Office issued a report regarding tax compliance issues relating to virtual
16 currencies. See U.S. Gov't Accountability Office Report GAO-13-516, *Virtual Economies and*
17 *Currencies: Additional IRS Guidance Could Reduce Tax Compliance Risk*. The GAO report found that
18 "some taxpayers may use virtual economies and currencies as a way to evade taxes. Because
19 transactions can be difficult to trace and many virtual economies and currencies offer some level of
20 anonymity, taxpayers may use them to hide taxable income." In March 2014, the IRS released Notice
21 2014-21, describing that virtual currencies that can be converted into traditional currency are property
22 for tax purposes, and a taxpayer can have a gain or loss on the sale or exchange of a virtual currency,
23 depending on the taxpayer's cost to purchase the virtual currency (that is, the taxpayer's tax basis).

24 In September 2013 the IRS expanded the scope of the Offshore Compliance Initiatives' (OCI)
25 Electronic Payment Systems Initiative (EPSI) to include convertible virtual currencies. Declaration of
26 Cheryl Kiger (Kiger Decl.), ¶ 4. EPSI was established in 2005 to develop projects, methodologies, and
27 techniques for identifying U.S. taxpayers who use electronic funds transfer and payment systems for tax
28

1 avoidance purposes. *Id.* That same month, Senior Revenue Agent David Utzke was hired in OCI. *Id.* In
2 December 2013, the IRS created a Virtual Currency Issue Team and Utzke was assigned to it. *Id.* ¶ 5. In
3 June 2014, the IRS internally approved Coinbase as a potential recipient of a John Doe summons. *Id.*
4 ¶ 8. It was not until a year later, in June 2015, that the Treasury Inspector General for Tax
5 Administration (TIGTA) contacted the IRS. *Id.* ¶ 9. In December 2015, the IRS advised TIGTA that
6 OCI was working towards issuing John Doe summonses to further its virtual currency investigation. *Id.*
7 In May 2016, the IRS referred its recommendation to the Department of Justice that it file *ex parte*
8 petitions seeking court approval for the service of John Does summonses, one of which was for
9 Coinbase. *Id.* ¶ 10.

10 In late September 2016, TIGTA issued its report on the increased use of virtual currencies and
11 the associated risks of reporting non-compliance in taxable transactions. Treasury Inspector General for
12 Tax Administration Reference Number: 2016-30-083, *As the Use of Virtual Currencies in Taxable*
13 *Transactions Become More Common, Additional Actions Are Needed to Ensure Taxpayer Compliance*
14 (September 21, 2016).

15 On November 17, 2016, the United States filed an *ex parte* petition in this Court seeking
16 approval for a John Doe summons to Coinbase. On November 30, 2016, this Court found that the
17 summons to Coinbase related to “the investigation of an ascertainable group or class of persons, that
18 there is a reasonable basis for believing that such group or class of persons has failed or may have failed
19 to comply with any provision of any internal revenue laws, and that the information sought to be
20 obtained from the examination of the records or testimony (and identities of the person with respect to
21 whose liability the summons is issued) are not readily available from other sources.” Having received
22 this Court’s approval, the IRS issued and served the summons to Coinbase.

23 **B. The Summons Issued to Coinbase Reflected the IRS’s Understanding of Coinbase’s**
24 **Business Based on its Public Representations**

25 By the time the IRS began to investigate the use of virtual currency in September 2013, bitcoin
26 had been on the market for a few years and was gaining mainstream attention. Coinbase emerged as a
27 leading virtual currency exchanger and because of its early entry to the market (June 2012) and success
28 the IRS began to consider it a possible recipient for a John Doe summons. The IRS reviewed Coinbase’s

1 website and publicly available information to develop a greater sense of Coinbase’s business. Based on
2 Coinbase’s public representations, the IRS believed that Coinbase was offering buy/sell trading
3 functionality in 32 countries, maintaining over 4.9 million wallets with wallet services available in 190
4 countries, serving 3.2 million customers, with \$2.5 billion exchanged in bitcoin. Declaration of David
5 Utzke, Case No. 3:16-cv-06658-JSC, Dkt. 2-4 (First Utzke Decl.), ¶ 39.

6 By December 2015, Coinbase was the fourth largest exchanger globally of bitcoin and the largest
7 exchanger in the United States. Based on everything the IRS had reviewed, it believed Coinbase had
8 possibly millions of users, who were all heavily engaged in the virtual currency marketplace. With this
9 in mind, the IRS drafted the summons to Coinbase that was approved by this Court.

10 **C. The Summons was Narrowed Based Upon Information Learned from Coinbase**
11 **After the Summons was Issued**

12 After the United States filed its *ex parte* petition for approval of the John Doe summons, it
13 contacted Coinbase to notify it of the action taken and to inform it, that although it may be the recipient
14 of a summons, it was not because there was any indication that it had engaged in any wrongdoing.
15 Shortly thereafter, the United States and Coinbase began discussions that continued until recently about
16 resolution of its compliance with the summons absent an enforcement proceeding. It was through these
17 discussions that the United States discovered that the activity levels of Coinbase’s users was less
18 vigorous than anticipated. Declaration of David Utzke (Third Utzke Decl.), ¶ 14. Based solely on the
19 discussions the United States had with Coinbase, it decided to narrow the scope of the requests for
20 which it now seeks enforcement. *Id.* ¶ 13

21 **II. Coinbase Cannot Challenge the Court’s Prior Determination**

22 The United States has shown, and this Court properly recognized, that the summons to Coinbase
23 relates to an IRS investigation of U.S. taxpayers who transacted in virtual currency between 2013
24 through 2015—an ascertainable group of persons. The United States has also shown that the IRS has a
25 reasonable basis to believe that this group of people failed or may have failed to comply with provisions
26 of the internal revenue laws. In meeting the “reasonable basis” prong, the United States explained how
27 transactions in virtual currency can be “of such a nature as to be reasonably suggestive of the possibility
28 that the correct tax liability with respect to that transaction may not have been reported.” H.R. Rep. 94-

1 658.

2 As described by Utzke, U.S. taxpayers, including Coinbase users, have made use of virtual
3 currencies to avoid the reporting and payment of taxes. *See* First Utzke Decl., ¶¶ 30, 34. Also, based on
4 the IRS’s experience, additional factors indicate the likelihood of tax non-compliance involving virtual
5 currency, including a lack of third-party information reporting; relative anonymity of the transactions; a
6 public perception that tax evasion is possible with virtual currency; and a failure among virtual currency
7 users to give their virtual currency transactions the proper tax treatment, including the proper valuation
8 of such transactions. *Id.* ¶ 29. Finally, there is no dispute that the only entities possessing information
9 relating to virtual currency transactions that identify the persons involved in the transactions, and hold
10 material relating to the transactions, are the exchangers and any intermediaries. Therefore, the IRS can
11 only summon a party known to have some role in the transactions, here Coinbase.

12 The IRS could only serve a John Doe summons on Coinbase after an *ex parte* proceeding in
13 which it demonstrated to this Court that the three requirements of § 7909(f) were met. 26 U.S.C.
14 § 7609(h). The United States made the requisite showing and this Court properly found that the
15 summons to Coinbase relates to the investigation of an ascertainable group or class, that there is a
16 reasonable basis for believing that U.S. persons who conducted such transactions failed or may have
17 failed to report income to the IRS, and that the information sought is not readily available to the IRS
18 from other sources. Now confronted with Coinbase’s refusal to comply with the summons, the United
19 States has instituted this enforcement proceeding to compel the records it seeks. But, the showing the
20 United States made to gain approval to serve the summons is wholly different from the showing it must
21 make for enforcement of the summons. Furthermore, Coinbase cannot challenge any of the
22 determinations this Court made in approving service of the summons. ¹ *United States v. Samuels*,

23
24 ¹ Coinbase relies on a letter from Senator Orrin Hatch and Representatives Kevin Brady and
25 Vern Buchanan (CB Brief at 6) that calls into question this Court’s finding that there is a reasonable
26 basis for believing that the Coinbase John Does have failed or may have failed to comply with any
27 provision of any internal revenue laws. The Congressmen also offer that, based on undisclosed
28 information from undisclosed sources, they find the summons directed to Coinbase to be overly broad.
These views are not authority. *E.g., Int’l Bhd of Teamsters v. United States*, 431 U.S. 324, 354 & n.39
(1977) (“[t]he views of a later Congress . . . are entitled to little if any weight. It is the intent of the
Congress that enacted [the statute at issue] that controls.”); *Slaven v. BP America, Inc.*, 973 F.2d 1468,
1475 (9th Cir. 1992) (“It is well settled that the views of a later Congress regarding the legislative intent
of a previous Congress do not deserve much weight.”) (quoting *Schrader v. Idaho Dep’t of Health*

1 *Kramer and Co.*, 712 F.2d 1342, 1346 (9th Cir. 1983) (“the three factual determinations that a district
2 court must make under section 7609(f) before issuing its ex parte authorization of a John Doe summons
3 may not be challenged.”); *In re All Unknown Employees of Boundary Waters Res. v. United States*, 866
4 F.2d 1015, 1018 (8th Cir. 1989); *Agricultural Asset Management Co., Inc., v. United States*, 688 F.2d
5 144, 148-49 (2d Cir. 1982). Even so, this is exactly what Coinbase is doing in opposition to enforcement
6 of the summons. Coinbase has intertwined its objections relating to this Court’s approval of the service
7 of the summons with the legal test for enforcement. This it cannot do.

8 **III. The Summons to Coinbase Was Issued for a Legitimate Purpose**

9 In order to show that a summons is valid and proper, the United States must establish that the
10 summons: (1) was issued for a legitimate purpose; (2) seeks information relevant to that purpose; (3)
11 seeks information that is not already within the IRS’s possession; and (4) satisfies all administrative
12 steps required by the United States Code. *See United States v. Powell*, 379 U.S. 48, 57-58 (1964). Courts
13 have held that the government’s burden of satisfying the *Powell* requirements is a “slight one” that can
14 be met “merely by presenting the sworn affidavit of the agent who issued the summons attesting to these
15 facts.” *La Mura v. United States*, 765 F.2d 974, 979 (11th Cir. 1985); *see also United States v. Gilleran*,
16 992 F.2d 232, 233 (9th Cir. 1993).

17 **A. Investigating Whether Coinbase’s Users Have Complied with their Tax Obligations** 18 **is a Legitimate Purpose for a Summons**

19 The United States has a system of taxation that relies on the good faith and integrity of each
20 taxpayer to disclose completely and honestly all information relevant to their tax liability. *See United*
21 *States v. Clarke*, ___ U.S. ___, 134 S.Ct. 2361, 2365 (2014); *United States v. Arthur Young & Co.*, 465
22 U.S. 805, 815-16 (1984). “Nonetheless, it would be naive to ignore the reality that some persons attempt
23 to outwit the system.” *United States v. Bisceglia*, 420 U.S. 141, 145 (1975). Accordingly, Congress has
24 conferred upon the IRS the duty to make inquiries, determinations, and assessments of all taxes, and has
25 correspondingly given it expansive information gathering authority, including the power to compel
26 disclosure, for that purpose. 26 U.S.C. §§ 6201(a), 7601(a), 7602. The summons power granted to the

27 *Welfare*, 768 F.2d 1107, 1114 (9th Cir. 1985)). This letter is evidence only of a successful lobbying
28 campaign and not of legislative history or intent. It is not relevant and it should be disregarded in its
entirety.

1 IRS under § 7602 is the centerpiece of that authority. That power is broad, and is designed to enable the
2 IRS to conduct effective tax investigations. *See Arthur Young & Co.*, 465 U.S. at 816. That statute
3 authorizes the IRS to examine records, issue summonses, and take testimony for the purpose of
4 “ascertaining the correctness of any return,” “making a return where none has been made,” “determining
5 the liability of any person for any internal revenue tax,” or “inquiring into any offense connected with
6 the administration or enforcement of the internal revenue laws.” 26 U.S.C. § 7602(a), (b); *see United*
7 *States v. Euge*, 444 U.S. 707, 710-11 (1980).

8 **1. The IRS is conducting an investigation of John Doe taxpayers**

9 Coinbase acknowledges the IRS’s statutory duties but nonetheless questions whether the
10 summons directed to it serves a “legitimate investigative purpose.” CB Brief at 10:15-24. At base, its
11 question seems to be whether the IRS is even conducting an investigation at all, despite this Court’s
12 determination and the sworn testimony of Utzke. Indeed, Coinbase questions the competency of Utzke’s
13 testimony based on the IRS group he is assigned to, the “conclusory nature” of his statement that the
14 IRS is conducting an investigation (to which he is assigned), and the IRS search of the Modernized Tax
15 Return Data Base (MTRDB). CB Brief at 4-5. The IRS expanded the responsibilities of OCI to virtual
16 currency. Kiger Decl., ¶ 4. There is no negative inference to be drawn from Utzke’s assignment to OCI.
17 Coinbase’s suggestion otherwise is attributable to its ignorance of IRS structure and an emphasis on
18 form over substance. As for the reality of the investigation, again, Utzke has offered testimony under
19 oath that there is in fact an IRS investigation to which he is assigned. Declaration of David Utzke, Dkt. 3
20 (Second Utzke Decl.), ¶ 2. To the contrary, Coinbase has only offered self-serving speculation and
21 argument.

22 **2. IRS evidence of underreporting**

23 Coinbase attacks the IRS’s search of the MTRDB and criticizes Utzke for both offering no
24 analysis of the MTRDB data and at the same time for offering analysis that is “fundamentally flawed.”
25 CB Brief at 13: 1-3. Specifically Coinbase complains that the MTRDB data is limited to electronic
26 returns and that Utzke did not reveal the IRS’s search terms. As to its first complaint, Coinbase is
27 correct; the searchable data available to the IRS in the MTRDB is derived from only electronically filed
28

1 returns. However, electronically filed returns represent 83-84% of the returns filed during the summoned
2 years. This is not an insignificant sample size.

3 The United States has offered evidence that, based upon the information available to the IRS
4 there appears to be a reporting gap between the number of virtual currency users Coinbase claims to
5 have had during the summons period (500,000) and U.S. bitcoin users reporting gains or losses to the
6 IRS during the summoned years (807, 893, and 802). Second Utzke Decl., ¶¶ 11-13. Both the
7 information known to the IRS about electronic filers and the claim made by Coinbase about the
8 potentially different behavior of paper filers (CB Brief at 13: 17-19) demonstrates the legitimacy of the
9 IRS's investigation. The IRS must ascertain if U.S. taxpayers are correctly filing returns, filing returns at
10 all, or self-reporting their proper tax liability. This is why the IRS is investigating virtual currency users.
11 This is why the IRS issued the summons to Coinbase. This is why the IRS is seeking to compel
12 Coinbase to comply with its summons. The IRS is fulfilling its statutory mandate. *See* 26 U.S.C. §§
13 6201(a), 7601(a), 7602.

14 As to Coinbase's second complaint, it is also correct that the IRS did not reveal the terms used to
15 search the MTRDB. Where Coinbase is wrong is in casting this omission as some statement on the
16 integrity of the IRS's search. The IRS searched the MTRDB database using variants of bitcoin, bit coin,
17 btc, and xbt. Third Utzke Decl. ¶ 7. The IRS selected these terms because they are the most likely to
18 identify reporting of bitcoin related transactions and Coinbase did not execute transactions in any other
19 virtual currencies during the summons period. *Id.*

20 **3. Coinbase demonstrates why the IRS investigation is needed**

21 Coinbase also criticizes Utzke's testimony as inaccurate because he states that "[c]apital gain or
22 loss for property transactions (which gains and losses from virtual currency are considered) are reported
23 on Form 8949, which is attached to Schedule D of a Form 1040." Second Utzke Decl., ¶ 11. Coinbase
24 counters with several examples² of other ways that a taxpayer may report their virtual currency
25

26 ² Coinbase posits as an example a taxpayer who receives wages in bitcoin or an independent
27 contractor who received bitcoin as payment and reports these amounts on lines 7 and 12 of their Form
28 1040. CB Brief at 13: 5-8. However, taxpayers receiving virtual currency as wages or other income
would need to sell or exchange the bitcoin to pay for goods and services. Therefore, a corresponding tax
return entry should reflect such sale or exchange, which would be reported on Form 8949.

1 transactions. CB Brief at 13. But the fact that taxpayers may be failing to *properly* report and fully
2 account for their virtual currency transactions does not make Utzke’s testimony not credible; rather, it
3 demonstrates the legitimacy of the IRS’s investigation. Again, the IRS is charged with “ascertaining the
4 correctness of any return.” 26 U.S.C. § 7601. If, as Coinbase asserts, taxpayers are wrongly reporting
5 their virtual currency transactions, it is the IRS’s duty to discover those errors and correct them.³

6 **B. The Summons to Coinbase Was Not Issued for Research or Public Relations**
7 **Purposes**

8 Coinbase chastises the United States for its press release wherein it acknowledged that a John
9 Doe summons serves an educational purpose as well as being an important enforcement tool. CB Brief
10 at 11: 6-11. Coinbase ties this alleged impropriety with an admonition that the IRS cannot use its
11 summons power for research purposes.⁴ CB Brief at 10:24-11: 5. However, the IRS sought and issued
12 the summons to Coinbase because it suspects there is a tax compliance problem with U.S. taxpayers
13 using virtual currency and it is duty-bound to investigate issues of tax non-compliance—not for research
14 or any public relations purpose. Nevertheless, the summons is not made unenforceable because the IRS
15 will benefit from the additional educational aspect of the summons and any research it may yield. *See*
16 *United States v. Stuckey*, 646 F.2d 1369, 1375 (9th Cir. 1981); *see also Sterling Trading, LLC v. United*
17 *States*, 553 F. Supp.2d 1152, 1158 (C.D. Cal. 2008) (taxpayer must show “no legitimate purpose”);
18 *Wooden Horse Inv., Inc. v. United States*, 806 F. Supp. 1487, 1491-92 (E.D. Wash. 1992).

19 Coinbase’s cites to *United States v. Humble, Oil & Refining Co.*, 488 F.2d 953, 962-63 (5th Cir.
20 1974), but *Humble* is distinguishable. In that case, which was decided prior to the enactment of
21 § 7609(f), the court denied enforcement of a summons that the IRS admitted was issued *solely* for the
22 collection of data for research purposes and not part of any particular investigation. *Humble*, 488 F.2d at

23
24 ³Coinbase also points out that the relative low volume of reporting may be caused by a lack of
25 gain on the part of virtual currency users. CB Brief at 14. There is no *de minimus* exception for virtual
26 currency transactions; thus even such transactions with small gains must be reported. In addition,
27 Coinbase’s theory on the low volume of reporting is based on an assumption that the bitcoins sold
28 during the summons period were also bought during the summons period, a time of general decline in
value in the market. Moreover, because the price fluctuated over the summons period, it cannot be fairly
assumed that only losses were likely.

⁴Coinbase has also alleged that the IRS issued the summons to deflect criticism or solve policy
failings. As the relevant timeline makes clear, the summons was not issued in response to the TIGTA
report or Congressional criticism.

1 956.⁵ That is not the case here, as all the evidence in the record is consistent with the determination
2 already made by this Court that the IRS is conducting an investigation into U.S. taxpayers who may
3 have failed to report their income to the IRS. The IRS is not seeking enforcement of the summons solely
4 to further a research project or any public relations purpose. Rather, the IRS seeks the summoned
5 information to do exactly what Congress authorized and charged it to do: make an accurate
6 determination of tax liability for U.S. persons who transact in virtual currency. *See* 26 U.S.C. § 6201(a).

7 **IV. The Summoned Information is Relevant to the IRS's Investigation**

8 The United States must establish that the information it seeks is relevant to the IRS's
9 investigation of U.S. taxpayers who transacted in virtual currency between 2013 through 2015. Section
10 7602 authorizes the IRS to examine "any books, papers, records, or other data which may be relevant or
11 material." In *Arthur Young & Co.*, 465 U.S. at 814, the Court stated that the language "may be" reflects
12 Congress's express intention to allow the IRS to obtain "items of even *potential* relevance to an ongoing
13 investigation, without reference to its admissibility." The IRS need not show that the "documents it
14 seeks are actually relevant in any technical, evidentiary sense." *Id.* In *Powell*, the Supreme Court noted
15 that the IRS can issue a summons to investigate "'merely on suspicion that the law is being violated, or
16 even just because it wants assurance that it is not.'" 379 U.S. at 57 (quoting *United States v. Morton*
17 *Salt*, 338 U.S. 632, 642-43 (1950)). Thus, in applying the *Powell* test, the question is not whether the
18 records sought, when disclosed, will contradict a taxpayer's return, but whether the records "might"
19 throw light upon the correctness of a return. *Arthur Young*, 465 U.S. at 814-15 & n.11. The IRS need not
20 accept the word of the summoned party that records are not relevant.⁶ It is entitled to determine that fact
21 for itself. *See Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310, 323 (1985).

22
23 ⁵ Further, as later explained by the Fifth Circuit, the decision in *Humble* should be read to mean
24 that the IRS can summon information that may be used for research purposes if it would also aid in the
25 investigation of unknown taxpayers where there is an ongoing investigation. *United States, v. First Nat.*
Bank in Dallas, 635 F.2d 391, 395-96 (5th Cir. 1981). *Accord United States v. Reprints, Inc.*, No. 78-
1537A, 1978 WL 1238, at *2 (N.D. Ga. Nov. 18, 1978).

26 ⁶ Coinbase offers that all the IRS needs for its investigation is a "spreadsheet identifying each
27 account holder (by name, address, and social security number) and the dollar value of transactions in
28 each account (broken down by year, and perhaps further broken down by the value of sales, purchases,
send transactions, and receive transactions in each year)." CB Brief at 19: 1-5. Coinbase's suggested
spreadsheet lacks additional information the IRS needs to further its investigation. Further, contrary to
Coinbase's apparent working assumption, the IRS is not limited to seeking just names and basic
identifying information when it issues a John Doe summons.

1 Coinbase challenges whether the summoned information is relevant to the IRS's investigation. It
2 doubts that the IRS has a realistic expectation that anything will be discovered if it is ordered to produce
3 the information sought. CB Brief at 15. Indeed, the IRS does not have some idle hope that the revelation
4 of the identities and transaction activity of 14,355 Coinbase users will lead to information that may
5 throw light on the correctness of filed returns. It is sure of it. Armed with the identity of a Coinbase user
6 and their transaction activity the IRS can determine if that user filed a tax return that correctly reflected
7 any bitcoin related gain or loss during the summoned period.⁷ Second Utzke at 7-9. Once the IRS is in
8 possession of the "know your customer" information, it will be able to confirm the identity of any
9 Coinbase user. *Id.* Third-party access documents allow the IRS to know if individuals other than the
10 named user of the account were able to transact using that account, possibly revealing taxable events
11 attributable to different taxpayers. *Id.* Transaction logs and counter-party information will reveal to the
12 IRS the actual account activity for each user under investigation and can be used to calculate gain or
13 loss. *Id.* The communications between Coinbase and its users regarding account openings, closings, and
14 transaction activity may reveal information related to how many bitcoin an account was opened or
15 closed with, which may also assist in determining value, and other circumstances surrounding account
16 creation or termination. *Id.* Likewise, any communication about transaction activity may reveal further
17 information about the value of the transactions and the parties thereto. *Id.* All of this information is
18 plainly relevant to the IRS's investigation of U.S. taxpayers who transacted in virtual currency.

19 **A. The Summons to Coinbase is Not Overbroad**

20 Coinbase argues that, because the summons would call for the production of more than 8.9
21 million transaction records and other information from 14,355 accounts, it is overbroad and therefore
22 unenforceable.⁸ CB Brief at 15. However, in testing for overbreadth, the question is not whether the

24 ⁷Coinbase contends that the IRS does not need both a user's wallet addresses and public keys
25 because "generally" Coinbase uses addresses and not public keys. CB Brief at 19: 7-18. For those
26 transactions in which the user did not have access to the public key, but only the address, Coinbase need
27 not produce the public keys associated with such activity.

28 ⁸Without citation, Coinbase states that the United States conceded that its original summons was
overbroad. CB Brief at 14:21-22. The United States has never made any such concession. The United
States has narrowed the requests for which it seeks enforcement (which is not unusual in a summons
case) based on what it has learned from Coinbase about its users. If Coinbase's user's activity had been
as robust as the IRS believed it to be when it issued the summons, the United States would not have
narrowed its enforcement request.

1 summons calls for the production of a large volume of records. Instead, the questions are rather, first did
2 the summons describe the requested documents in enough detail to inform the summoned party of
3 exactly what is to be produced, *United States v. Abrahams*, 905 F.2d 1276, 1282, 1285 (9th Cir. 1990)
4 (*overruled on other grounds by United States v. Jose*, 131 F.3d 1325, 1329 (9th Cir. 1997), and, second,
5 may the summoned records be relevant to the inquiry. *In re Tax Liabs. of John Does v. United States*,
6 866 F.2d 1015, 1021 (8th Cir. 1989). Summonses that are definite in nature and finite in scope, and that
7 request only information that may be relevant to the IRS's inquiry, consistently have been enforced
8 against challenges for overbreadth. *See, e.g., Sugarloaf Funding, LLC v. U.S. Dep't of the Treasury*, 584
9 F.3d 340, 348 (1st Cir. 2009); *United States v. Reis*, 765 F.2d 1094, 1096 n.2 (11th Cir. 1985); *United*
10 *States v. Linsteadt*, 724 F.2d 480, 483 n.1 (5th Cir. 1984); *United States v. Cmty. Fed. Sav. & Loan*
11 *Ass'n*, 661 F.2d 694 (8th Cir. 1981); *United States v. Nat'l Bank of S. D.*, 622 F.2d 365 (8th Cir. 1980).
12 Here, there is no dispute that the summoned documents have been identified sufficiently for Coinbase's
13 production. Further, the documents sought are all relevant to the IRS's investigation. Accordingly, the
14 summons is not overbroad and should be enforced.

15 **1. The summons to Coinbase is nothing like a summons to a bank for all**
16 **customer records**

17 At the core of Coinbase's arguments in opposition to enforcement is the question of whether the
18 IRS could use its statutory John Doe summons power to issue a summons to a bank for every single
19 customer account record. The implication being that the IRS summons is similarly broad and
20 unprecedented. Coinbase goes so far as to posit that enforcement of the summons here will lead to future
21 overreach by the IRS, including "a John Doe summons seeking all bank records for three years for any
22 U.S. person who used an ATM during that period." CB Brief at 12:8-10. This horribilizing fails to
23 recognize that there is no taxable event when cash is withdrawn from an ATM. There is no taxable event
24 when that cash is used later to buy something. However, if these types of transactions occur using
25 bitcoin instead of cash, they are taxable events. Bitcoin is property. So, if an ATM dispenses cash for
26 bitcoin, the user has a taxable event at the withdrawal of the cash from the ATM based upon the value of
27 the bitcoin when acquired compared to when the cash is withdrawn. And, if instead of exchanging
28 bitcoin for cash at an ATM, the user simply purchases something with bitcoin, the completion of the sale

1 is also a taxable event. By law, there is no third party reporting of those events to the IRS, but these
2 taxable events should be self-reported.⁹ Whether or not the taxpayer intends to evade the payment of tax
3 is beside the point; all U.S. persons must comply with internal revenue laws. This is why the United
4 States is seeking enforcement of the summons to Coinbase.

5 **2. The IRS can review all the summoned information**

6 Coinbase also argues that, because the IRS cannot audit all 14,355 of its users, the summons is
7 overbroad; urging this Court to find that if the IRS cannot examine all 14,355 users then it should not be
8 permitted to examine even one. CB Brief at 18: 7-14. Missing from Coinbase’s argument is any
9 authority that supports its novel proposition that a John Doe summons is unenforceable unless it results
10 in an examination of every single person identified. Indeed, the United States is not aware of any such
11 authority. Additionally, even if the IRS does not initiate an examination for each of the 14,355 Coinbase
12 users, it does intend to review and use the summoned information in a very specific ways. To evaluate
13 tax compliance the IRS intends to conduct risk assessments for each of the 14,355 users based on the
14 information received from Coinbase coupled with the filing information in its possession. Kiger Decl.,
15 ¶ 14. The assessment of potential tax non-compliance will determine the appropriate compliance
16 response, which could include an examination of the taxpayer, issuance of a letter to the taxpayer
17 requesting corrected returns, issuance of an education letter outlining reporting requirements, or no
18 action if the transactions were properly reported. *Id.*

19 **3. This Court should not adopt a new, and incorrect, standard for the proper**
20 **scope of a John Doe summons**

21 Coinbase argues that the summons is overbroad and unenforceable because it has not been
22 narrowed to capture only those U.S. taxpayers “with some indicia of wrongdoing.” CB Brief at 18: 21.
23 This argument suggests that specific intent is required before the IRS can investigate taxpayers for non-
24

25 ⁹In this context, there is no equivalency between a bank account and a Coinbase account. For
26 example, banks are required to provide the IRS with third party reporting of interest income. Moreover,
27 to the extent U.S. persons use their bank accounts for the deposit of their paychecks, the IRS will also
28 receive that information (Form W-2). If a taxpayer had an investment account at a financial institution,
the gains on that account are subject to IRS reporting requirements. On the other hand, Coinbase is not
required to report anything similar to the IRS.

1 compliance. CB Brief at 16-17. Coinbase cites not authority for that proposition.¹⁰ The internal revenue
2 laws do not require any showing of *mens rea* before the IRS can properly investigate by summons.
3 Instead, § 7609(f) requires only that there be a reasonable basis for believing that the John Does “may
4 have failed to comply with any provision of any internal revenue law.” A failure to properly report gain
5 on a transaction conducted with virtual currency would be a failure to comply with an internal revenue
6 law, regardless of whether that failure was due to a lack of knowledge or motivated by some
7 wrongdoing. It is well established that the IRS need not have probable cause to examine the correctness
8 of returns or the correct liabilities of any taxpayer. *Powell*, 379 U.S. at 48. The law does not restrict the
9 IRS to investigating wrongdoing. This Court should refuse Coinbase’s call to invent such a requirement.

10 **B. The Summons to Coinbase is Not Unduly Burdensome**

11 Coinbase objects to enforcement of the summons based on the volume of material it would have
12 to produce—that is, compliance with the summons is allegedly too costly and difficult.¹¹ However, it is
13 well established that enforcement of a summons seeking relevant records will not be denied merely
14

15 ¹⁰ Coinbase cites to *United States v. Goldman*, 637 F.2d 664 (9th Cir. 1980) and *David H. Tedder*
16 *& Assocs. V. United States*, 77 F.3d 1166 (9th Cir. 1996), suggesting a John Doe summons for customer
17 names is only properly used in investigations of large cash deposits, abusive tax shelters, or when
18 offshore banking/credit cards are involved. CB Brief at 22:8-12. First, neither case involved a John Doe
19 summons. Accordingly, nothing in either case limits the IRS use of a John Doe summons to these
20 categories of cases. Further, nothing in § 7609(f) limits the IRS use of a John Doe summons to these
21 categories of cases. Indeed, the IRS has properly issued, served, and received material from summonses
22 related to a much wider swath of subject matters than Coinbase contemplates. Furthermore, the question
23 in *Goldman* was about the relevance of tax year information beyond the scope of the years under exam
24 and the question in *Tedder* was whether an attorney’s client names were relevant to the examination of
25 the attorney’s own tax liabilities. Here, the IRS seeks records only for the years under investigation and
26 for users’ names only in order to determine their own individual liabilities.

27 ¹¹ Coinbase describes the difficulty of compliance with the summons given how it has set up its
28 systems for recordkeeping. CB Brief at 19-20. However, under the FinCEN regulations, Coinbase is
29 required to obtain and retain many of the summoned records. See 31 C.F.R. § 1010.410(e)(1)(i) and
30 § 1022.400. Additionally, under the FinCEN regulations, Coinbase must be able to retrieve the records it
31 is required to keep (“have the information readily available”). FIN-2016-G001 (Mar. 11, 2016). Failure
32 by Coinbase to obtain, retain, and retrieve required records could subject it and its employees to civil
33 and criminal penalties. Furthermore, many of the states in which Coinbase operates have their own
34 regulations that require it to keep and produce many of the summoned records. For example, in New
35 York, Coinbase is required to make and maintain (for seven years) books and records that reflect for
36 each transaction: the amount, dates, time, names, account numbers and physical address of the parties.
37 23 CRR-NY § 200.12. It must also create and maintain general ledgers, statements, and records
38 demonstrating compliance with applicable state and federal anti-money laundering laws (including
39 customers identification and verification documents, records linking customers to their respective
40 accounts and balances), and communications. *Id.* All of these records must be kept in a manner that
41 allows New York authorities to determine compliance with the law. *Id.*

1 because the summons seeks production of (or a search through) a great many records or will result in
2 significant expenditure of the recordkeeper's time and money. *See, e.g., United States v. Abrahams*, 905
3 F.2d at 1285-86; *United States v. Luther*, 481 F.2d 429, 432-33 (9th Cir. 1973) (the fact that the
4 summoned records were extensive was not material to whether or not the summons should be enforced);
5 *United States v. Rugeiro*, 425 F.2d 1069, 1070-71 (9th Cir. 1973) (summons for "voluminous" records
6 enforced over objections of breadth and oppression); *United States v. Judicial Watch*, 371 F.3d 824, 832
7 (D.C. Cir. 2004); *Spell v. United States*, 907 F.2d 36, 39 (4th Cir. 1990); *In re Tax Liabs. of John Does*,
8 866 F.2d at 1021 (rejecting employer's claim that the cost of compliance with summons seeking payroll
9 records was out of proportion to any revenue the IRS might obtain); *United States v. Berney*, 713 F.2d
10 568, 571-72 (10th Cir. 1983); *United States v. Southwestern Bank & Trust Co.*, 693 F.2d 994, 996 (10th
11 Cir. 1982) (reversing district court's refusal to enforce fully a summons requiring review of 10 million
12 documents). Moreover, there is a general duty on the part of third party record keepers to respond to an
13 IRS summons and to bear some of the burden of doing so. *See In re Tax Liabs. of John Does*, 866 F.2d
14 at 1022; *United States v. Southwestern Bank and Trust Co.*, 693 F.2d 994, 996 (10th Cir. 1982).

15 The production of 8.9 million transaction records is not out of line with what the IRS receives, or
16 expects to receive, when it issues a John Doe summons. The same can be said for the production of
17 14,355 accounts. Kiger Decl., ¶¶ 38-39. Moreover, Coinbase's cost estimate can be offset by
18 reimbursement or other IRS assistance. *See* 26 U.S.C. § 7610; 26 C.F.R. 301.7610-1.

19 **V. Enforcement of the Summons Would Not Be An Abuse of Process**

20 An abuse of process occurs "if the summons had been issued for an improper purpose, such as to
21 harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose
22 reflecting on the good faith of the particular investigation." *Powell*, 379 U.S. at 58. To meet this burden,
23 the "taxpayer must allege specific facts and evidence to support his allegations." *Liberty Financial*
24 *Services v. United States*, 778 F.2d 1390, 1392 (9th Cir. 1985). For the foregoing reasons and as
25 discussed in the Response to Intervenor John Doe 4, enforcement of the summons to Coinbase would
26 not be an abuse of process.

1 **VI. Coinbase Has Not Met Its Burden Establishing Entitlement to an Evidentiary Hearing**

2 “[S]ummons enforcement proceedings are to be ‘summary in nature.’” *Clarke*, 134 S. Ct. at 2367
3 (*quoting United States v. Stuart*, 489 U.S. 353, 369 (1989)). “[C]ourts may ask only whether the IRS
4 issued a summons in good faith, and must eschew any broader role of ‘oversee[ing] the [IRS’s]
5 determinations to investigate.” *Id.* (*quoting Powell*, 379 U.S. at 56). Accordingly, an evidentiary hearing
6 is not automatically or normally held. For the foregoing reasons, and as discussed in the Response to
7 Intervenor John Doe 4, Coinbase is not entitled to an evidentiary hearing in this matter.

8 **VII. Conclusion**

9 For the foregoing reasons, the United States’ Petition to Enforce Internal Revenue Service
10 Summons should be granted and the summons requests, as narrowed, should be enforced.

11 Dated this 1st day of September, 2017.

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